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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,625	01/08/2004	Edwin K. Shinault	1328	5950
7590	07/27/2005		EXAMINER	
Law Offices of John D. Gugliotta, PE, Esq. 202 Delaware Building 137 South Main Street Akron, OH 44308			SAFAVI, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/752,625	SHINAULT, EDWIN K.
	<b>Examiner</b>	<b>Art Unit</b>
	M. Safavi	3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 08 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 11-17 is/are rejected.
- 7) Claim(s) 6-10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/08/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, appears dependent upon itself.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 12, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Joyce.** Joyce discloses, Fig. 2, a telescopically adjustable support brace comprising a linearly elongated crossbar 22 terminating at opposing ends, a pair of adjustable arms 17, 19, wherein each one of said pair of arms is inserted into one of

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said ends, said pair of arms telescopically adjustable therein via pins 23, 26, 30 and apertures 24, 25, 29, and a pair of cleats 16,18, wherein each one of said cleats is distally affixed to one of said pair of arms wherein said pair of arms are adjustably set at a fixed linear length for maintaining a fixed linear distance between two objects. Cleats can be seen as having a plurality of points with "apertures" between and around the points.

**Claims 1, 12, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Heirich.** Heirich discloses, Fig. 1, a telescopically adjustable support brace comprising a linearly elongated crossbar 40 terminating at opposing ends, a pair of adjustable arms 22, 52, wherein each one of said pair of arms is inserted into one of said ends, said pair of arms telescopically adjustable therein via pins 44 and apertures 30 and a pair of cleats 10, 62/90, wherein each one of said cleats is distally affixed to one of said pair of arms wherein said pair of arms are adjustably set at a fixed linear length for maintaining a fixed linear distance between two objects. Each one of said pair of cleats is threadably adjustable via 56 and 26 to achieve fine adjustment of a linear length of said brace.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heirich.**

To have formed the Heirich apertures 30 at approximately one inch intervals, thus allowing adjustment at intervals of one inch, would have been obvious to one having ordinary skill in the art at the time the invention was made particularly since it has been well established that claims to relative dimensions is not patentably distinct from the prior art device, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984).

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce.**

To have formed the Joyce apertures 24/25, 29 at approximately one inch intervals, thus allowing adjustment at intervals of one inch, would have been obvious to one having ordinary skill in the art at the time the invention was made particularly since it has been well established that claims to relative dimensions is not patentably distinct from the prior art device, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984).

**Claims 1-5, 11, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al. in view of Astrom.**

Jacobs et al. discloses Figs. 1 and 2, a telescopically adjustable support brace comprising a linearly elongated crossbar 10 terminating at opposing ends, a pair of adjustable arms 88, 88 or 64 and 88, wherein each one of said pair of arms is inserted into one of said ends, said pair of arms telescopically adjustable therein, and a pair of abutment ends 86 wherein each one of said abutment ends is distally affixed to one of said pair of arms wherein said pair of arms are adjustably set at a fixed linear length for maintaining a fixed linear distance between two objects 12, 14. The crossbar 10 comprises a first crossbar 20 and a second crossbar 22 pivotally coupled about pivot means 36. The pivot means further comprises a lock 62. Jacobs et al. does not appear to specifically disclose cleats to hold the adjustable brace in place.

Astrom teaches utilization of cleats having alternating points and recesses, page 1, lines 44-47, to hold adjustable brace in place. To have provided the Jacobs et al. adjustable brace with cleats in place of the abutment pads 86, thus allowing a firm grip of the brace between any specific objects, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Astrom.

**Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al. in view of Astrom as applied to claims 1-5, 11, and 15-17 above, and further in view of Hunt.**

Hunt discloses a brace having bearing pad ends 36,36' which are threadably adjustable to achieve fine adjustment of a linear length of the brace. To have provided the modified Jacobs et al. adjustable brace with threadably adjustable cleats thus

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allowing a fine adjustment of a linear length of the brace between any specific objects, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Hunt.

Claims 6-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354

M. Safavi  
June 22, 2005